

Supreme Court, U. S.
FILED

MAY 25 1979

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1978

No. **78 - 1765**

THE SERBIAN EASTERN ORTHODOX DIOCESE
FOR THE UNITED STATES OF AMERICA
AND CANADA,
An Illinois Corporation, *et al.*,
Petitioners,

vs.

THE SERBIAN EASTERN ORTHODOX DIOCESE
FOR THE UNITED STATES OF AMERICA
AND CANADA,
A Religious Body, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI To the Supreme Court of Illinois

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The Serbian Eastern Orthodox Diocese for the United States of America and Canada, an Illinois corporation and Defendant herein, and the Serbian Eastern Orthodox Monastery, an Illinois corporation and Defendant herein, respectfully petition for a Writ of Certiorari to review the judgment of the Supreme Court of Illinois in the above entitled case.

OPINIONS BELOW

The Supreme Court of the United States under date of June 21, 1976 following a previous grant of certiorari issued an opinion reported under *Serbian Eastern Orthodox Diocese v. Milivojeovich*, at 426 U.S. 696, 96 Supreme Court 2372, 49 Lawyer's Edition 151. The Supreme Court of Illinois requested counsel on both sides of this litigation to suggest to the Supreme Court of Illinois what ought to be contained in its mandate to the Illinois trial court. Following receipt of those suggestions, which will be referred to herein, the Supreme Court of Illinois issued an opinion on April 26, 1977 reported at 66 Illinois 2d 469, 363 N.E.2d 606, but found in the Appendix of this Petition on page A29.

Thereafter, in accordance with Illinois proceedings and that mandate, a combined ruling and judgment was filed in the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, on February 22, 1978. It is unreported and is found in the Appendix on page A17. In response to post-trial filings by both parties, Judge Doran, the signator of that ruling and judgment, filed a post judgment memorandum partially modifying the February 22, 1978 judgment. The date of that modification was March 28, 1978. It is unreported but is found in the Appendix at page A14.

Thereafter direct appeal was allowed to the Supreme Court of Illinois resulting in its opinion and judgment issued on January 15, 1979. That opinion is unreported and is found in the Appendix at page A6. Petition for rehearing was timely filed but was denied. The denial, however, resulted in a slight modification of wording under date of March 30, 1979. The January 15 opinion and the March 30 modification are found in the Appendix at page A2.

JURISDICTION

The order and judgment of the Supreme Court of Illinois was entered on January 15, 1979. The order of the Supreme Court of Illinois denying timely petition for rehearing was entered on March 30, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3).

QUESTION PRESENTED

Does this Court's previous opinion in the same litigation, *Serbian Eastern Orthodox Diocese v. Milivojeovich*, 426 U.S. 696 (1976), and specifically the First Amendment as therein interpreted require civil courts to defer to the decisions of Church court judicatories in quasi-hierarchical Church structures so as to bar state courts from examining corporate by-laws, state statutes, membership rosters, etc. in order to transfer control and ownership of property, in deference to the wishes of the superior church body?

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment I:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof
...

United States Constitution, Amendment XIV, Section 1:

... nor shall any state deprive any person of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

Reference is had to the Court's own opinion previously referred to. Prior to that opinion there had been almost thirteen years of litigation. The background of the Serbian Church in this country and the essential facts of the previous proceedings are set forth with a great deal of detail in the opinion of Mr. Justice Brennan and in the dissenting opinion of Mr. Justice Rehnquist.

When the mandate previously issued was received in Illinois, the Supreme Court called upon counsel for both sides to suggest to the Supreme Court what its mandate ought to contain together with suggestions for further proceedings. In the suggestions filed by Defendants-Appellants (hereinafter Corporate Defendants) position was taken consistent with the statement made by Mr. Justice Brennan that no determination had been made by the Illinois Courts on the question of "whether corporate by-laws or other documents governing the individual property holding corporations might effect any desired disposition of diocesan property." *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724. It was argued to the Supreme Court of Illinois in accordance with *Mitchell v. W. P. Grant Company*, 416 U.S. 600 at 604, that "the definition of property rights is a matter of state law."

Appellees (hereinafter the Religious Bodies) took the position, in spite of Mr. Justice Brennan's opinion, that: "No issue is currently presented concerning the disposition of any property" (page 10 of Suggestions of Religious Bodies Regarding Mandate to be issued by the Supreme Court of Illinois).

In response to the suggestions for mandate (32 pages on behalf of the Corporations plus Appendices and 46 pages on behalf of the Religious Bodies plus Appendices) the Illinois Supreme Court simply affirmed the Lake County

opinion as to the status of Dionisije as Bishop and reversed the Lake County determination holding the reorganization of the diocese to have been invalid (App. p. A29).

Thereafter following extensive rebriefing and argument (but having denied any additional evidence) Judge Doran issued an opinion and a modification of that opinion in the Winter of 1978. He interpreted the *Milivojevich* opinion as requiring him simply to redraft the Court's previous decree and stated that he was not dealing with ownership of property (Post-judgment memorandum, page 2, Appendix page A16). He made that statement, although paragraph six of the February decree states that the Corporate Defendants "are ordered to relinquish and turn over control and management of all diocesan property and assets now in their control."

Appeal was regularly taken, and it was argued that the Doran opinions ignored the applicable Illinois statutes, the corporate by-laws, etc. In the Doran memorandum language appeared susceptible of the interpretation that Pennsylvania, California, and New York corporations which had never been party Defendants were also to turn over property because of an Illinois state court order. Request was made that the Supreme Court of Illinois reverse the trial court opinion to make it perfectly clear that Illinois had no jurisdiction over the foreign Defendants (Point One in Brief of Appellants to the Supreme Court of Illinois). Request was also made for reversal because the trial court had not allowed consideration of written corporate and title documents concerning the Illinois property owned by the Illinois corporations (Point Four, *ibid.*). Request was made for reversal because of the specific determination of the trial court that one Irinej Kovachevich was not a Bishop although he had been consecrated by other Orthodox clerics all the way up to the Patriarch of

Alexandria. (Bishop Irinej and other bishops referred to in the various arguments previously filed are not parties Defendant, but a civil court has now purported to defrock them. Argument is not made herein that this is a constitutional error since they cannot be bound by this determination but reference is made to this determination in order to demonstrate the extent to which the Illinois trial court regards itself as a simple rubber-stamp for Belgrade.)

As might be expected, Appellees' brief stated that Judge Doran had been perfectly justified in rubber-stamping Belgrade and, interestingly enough, stated that it had been his duty to enter a judgment order "implementing the decision and mandate of the United States Supreme Court by placing Plaintiffs in possession of diocesan property" (page 36, Brief for Appellees on Appeal to the Supreme Court of Illinois). This writer cannot find that directive in *Milivojevich*.

The Supreme Court of Illinois then issued the opinion respecting which petition is here being filed and stated (Appendix page A11): "We cannot entertain the Defendants' contention that the property held by the foreign corporations is, under their constitution and by-laws controlled individually by their members and is not in fact diocesan property." They stated that the case had been decided on the implied trust theory and they found no error in the finding of the trial court that Bishop Firmilian, the successor to Dionisije, was administrator of the Corporate Defendants and charged with administering some never-defined trust.

REASON FOR GRANTING THE WRIT

As a result of this Court's opinion enunciated previously herein in this litigation (*Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976)) lower courts are in conflict and do not understand what role, if any, they are to play in resolving property disputes centering around religious bodies.

This Court assumed in *Mary Blue Hull*, 393 U.S. 440 (1969), again in *Maryland and Virginia Eldership v. Church of God*, 396 U.S. 367 (1970), again in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), and yet again (in that opinion which will presumably be enunciated by the time this petition is being read) in Case No. 78-91 *R. W. Jones v. Charles T. Wolf*, now pending, that it had delineated the limits of court involvement in religious-oriented property disputes.

Up to this point there is no inkling that it had intended to simply make state courts the enforcing arms of religious judicatories; no inkling that the First Amendment as recently interpreted requires state courts to "establish" superior religious bodies in all instances against the wishes of their members even in the face of long existing corporate by-laws, state statutes, documents of title, etc.

However, as of the drafting of this petition for certiorari (prior to opinion in 78-91) there is obvious confusion most simply exemplified in this litigation by the outright refusal of the state court to look at its own state statutes or the by-laws, membership rules, etc. of two corporations founded and existing in its own state.

As is revealed by this Court's previous opinion herein, in the early part of this century residents of this country, Serbian by birth, descent, or custom and Orthodox by religious training, intended to and did realign themselves

with the superior church structure having its See in Belgrade, Yugoslavia. Relevant documents and this Court's previous opinion make it apparent that as to control of property they intended to be independent of Yugoslavia (then a kingdom and now a Communist dictatorship). During the further history of Orthodox Serbians in this country they governed themselves by a triennial national assembly electing laymen to all appropriate church boards over which the bishop was the ceremonial and administrative head. Where appropriate they were careful to follow applicable state laws and form separate corporations (Three of them are referred to in passing at 426 U.S. 703. None of those three corporations is a party Defendant herein). rather than adopt the Roman Catholic system which has property owned by clerics in order to insure that the property is specifically tied to the Church.

Having attempted decades ago to insulate themselves from control from overseas, many Orthodox Serbians are now faced with an order from a state court directing them to turn their property over to that control. The national assembly called in early 1963 was a regularly-called successor to many previously called assemblies. It was attended by many individuals who are now on both sides of this dispute. Those controlling the corporate defendants attended the reconvened 1963 assembly and each succeeding assembly; those controlling the religious bodies voluntarily stayed away from each of those assemblies. Those elected successors to the last pre-dispute assembly have continued to manage the property and the corporate entities holding the property in accordance with rules in effect prior to 1963; they have continued in all non-religious ways to act as they did before Belgrade in 1963 defrocked Dragoljub Milivojevic and divided the religious diocese (not the Illinois corporation) into three.

When attempt was made following this Court's mandate in 1976 to have the Illinois state court system determine what the deeds said, what the corporate charters said, what the corporate by-laws said, and what the membership rules said about who was entitled to participate in these national assemblies, the state court refused to consider those questions and rather took the position that it had a simple "direction to revise the decree with respect to the erroneous conclusions of law reached by the trial court" (Post-Judgment Memorandum, March 28, 1978, Appendix page A15).

In *Milivojevic* what this Court stated is that the Illinois Court had erred and contravened the First Amendment by "interposing its judgment into matters of ecclesiastical cognizance and polity." As to the determination concerning the ecclesiastical status of Dragoljub Milivojevic these appealing parties concede that no issue can longer be raised. (He is now deceased and perhaps in a position to finally know whether, in a metaphysical sense, he died as a layman or a cleric.)

This Court also said the question of reorganization of the religious diocese is a matter of internal church government and that religious freedom encompasses the power of religious bodies to decide for themselves matters of internal church government as well as of faith and doctrine. The Defendant corporate bodies are not quarrelling with the opinion of the Supreme Court, but they have had formal existence since 1935 and 1945 respectively. Since those dates they thought that they had the power to make internal governing decisions; they thought they had been regularly exercising that power; and thought they were still entitled to exercise it.

Since 1976 as secular bodies with admitted ties to a religious structure, we have been trying to get the Illinois

courts to afford us that power of internal church government that is referred to in the previous *Milivojeovich* opinion. We have been trying to get the Illinois courts to give the Illinois Defendant corporations an opportunity to govern themselves consistent with their own by-laws. The Illinois courts, however, have interpreted what was stated in *Milivojeovich* to require absolute deference on their part to whatever emanates from Belgrade. The Illinois court did not direct that a national assembly be reconvened and that the by-laws be followed. Rather, it directed that the corporate officers elected triennially in lawful succession to corporate officers elected prior to this dispute turn over control of all the corporate assets to one man, or perhaps more correctly stated, one bishop. The corporate documents never provided for power to reside in one man or one bishop and the Illinois court has now effectively rewritten the corporate regulations in order to "establish" the Serbian Orthodox Patriarchate.

Previous constitutional pronouncements do not take away from state courts the power to use neutral documents and neutral principles of law to decide property questions. If we were facing a decree which stated we were in the minority (assuming congregational polity) or if we were facing a decree which stated under some express provisions of a written trust that we were not qualified to continue to serve as corporate officers, we could not now be making the appeal we are making. However, we are not facing any such decree.

Rather, the Illinois court has taken the position that they must follow the mandate of this Court to the effect that Dionisije is no longer a bishop; and we concede that mandate must be followed. The Illinois courts have taken the position that they must accept the mandate of this court that the mystical body, the religious entity, the dio-

cese has been divided into three; and we must accept that decision.

However, the Illinois court then went on to state that because we had not historically and immediately accepted those decisions we must simply walk away from the property owned by the Illinois corporations although the Illinois courts in 1973 had made an express finding that we had not in any way between 1963 and 1973 deviated from the proper administration of that property. It is obvious that what the Illinois court is now doing is disqualifying us from participation in management of our corporate affairs because of what the Illinois court has determined to be the way in which we should have practiced our religion from 1963 forward.

It is assumed that counsel for the religious bodies will take strong issue with this writer's statement of what has happened. However, the Illinois Supreme Court granted a stay order following written application, which application referred to our intent to petition this Court for certiorari. Thereafter, counsel for the religious bodies filed a motion to condition stay on the prompt filing of our petition for certiorari. In their written argument they twice labeled us "schismatic" and once stated that our occupation of corporate property was a "heresy of the highest order." Allow me to repeat for purpose of emphasis: the occupation by the Defendants of corporate property is "heresy." Isn't it obvious from the language of counsel for the religious bodies that they understand what has happened to us in Illinois in exactly the same fashion we do? The Illinois court has decided we are "schismatic," and have gone into "heresy" and as a result has ordered us to turn over our property.

Such treatment is not countenanced by the First Amendment and we ask that this Court reverse and remand

with express instructions to determine all questions concerning control of the diocesan property in accordance with the written documents governing the control of the diocesan property and not on the basis of whether since 1963 we have paid religious obeisance to Dionisiye or to Firmilian.

CONCLUSION

For the foregoing reasons this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

NOTIFICATION OF ORDER OF THE ILLINOIS SUPREME COURT DENYING PETITION FOR REHEARING

(Dated March 30, 1979)

No. 50639

THE SERBIAN EASTERN ORTHODOX DIOCESE
FOR THE UNITED STATES OF AMERICA
AND CANADA *et al.*,

Appellees,

v.

DIONISIJE MILIVOJEVICH *et al.*,
Appellants.

A2

ILLINOIS SUPREME COURT

CLELL L. WOODS, CLERK
Supreme Court Building
Springfield, Ill. 62706
(217) 782-2035

March 30, 1979

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No. 50639 — The Serbian Eastern Orthodox Diocese for the United States of America and Canada, a Religious Body, et al., appellees, vs. The Right Reverend Bishop Dionisije Milivojevic, et al., etc., appellants. Appeal, Circuit Court (Lake).

The Supreme Court today denied the petition for rehearing in the above entitled cause. Mr. Justice Moran and Mr. Justice Kluczynski took no part. I enclose a copy of pages 1 and 2 of the opinion as modified upon denial of the petition for rehearing.

Very truly yours, ,

/s/ CLELL L. WOODS
Clerk of the Supreme Court

A3

Docket No. 50639—Agenda 44—September 1978.

THE SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA *et al.*, Appellees, v. DIONISIJE MILIVOJEVICH *et al.*, Appellants.

MR. JUSTICE WARD delivered the opinion of the court:

This appeal is the sequel to an earlier appeal in this case reported at 60 Ill. 2d 477 (1975), *rev'd*, 426 U.S. 696, 49 L. Ed. 2d 151, 96 S. Ct. 2372 (1976). The plaintiffs are the Serbian Eastern Orthodox Diocese for the United States of America and Canada, the religious body of the Serbian Eastern Orthodox Church in this country ("American-Canadian Diocese"), and Bishops Firmilian Ocokoljich, ("Firmilian"), Gregory Udicki and Sava Vukovich. The defendants, who are the appellants here, are former Bishop Dionisije Milivojevic ("Dionisije"), the Serbian Eastern Orthodox Diocese for the United States of America and Canada, a corporation organized in 1937 under the provisions of the Illinois act relating to religious corporations (Ill. Rev. Stat. 1937, ch. 32, pars. 164 to 188), referred to in this opinion as the "religious corporation," and the Serbian Eastern Orthodox Monastery of the St. Sava, a corporation organized in 1945 under the provisions of the Illinois General Not for Profit Corporation Act (Ill. Rev. Stat. 1945, ch. 32, pars. 163a to 163a100), referred to as the "monastery corporation."

This litigation had its origin on May 10, 1963, when the Holy Synod of the Serbian Orthodox Church suspended Dionisije, the then bishop of the American-Canadian Diocese. On July 23 the Holy Assembly of the Serbian church removed Dionisije from office, and on March 5, 1974, the Assembly unfrocked him. At the time

when Bishop Dionisije was suspended from office the Holy Synod appointed Firmilian as administrator of the Diocese. At the same time, the Holy Assembly dissolved the American-Canadian Diocese and replaced it with three new dioceses. With Dionisije's suspension Firmilian was also made administrator of one of the new dioceses, and when Dionisije was removed, Firmilian became its bishop. Administrators, and later bishops, were also named for the other two new dioceses.

On July 26, 1963, a complaint was filed in the circuit court of Lake County against Firmilian in the names of the religious corporation and the monastery corporation seeking to enjoin interference with the affairs and the assets of these corporations. Thereafter, on October 14, 1963, Firmilian and the other plaintiffs brought suit against Dionisije seeking to enjoin him from assuming or retaining control of the property belonging to the religious corporation or to the monastery corporation, and to direct him to turn over to the plaintiffs all assets of the two corporations. Each case involved the same issues regarding the control of the Diocese and its property, and they were consolidated. As noted previously, Firmilian and his adherents are denominated here as plaintiffs, and Dionisije and his supporters are referred to as the defendants.

After a bench trial the circuit court held that the suspension, removal, and unfrocking of Bishop Dionisije were valid, but that the reorganization of the Diocese was not. On direct appeal this court affirmed the latter part of the judgment, but reversed as to Dionisije's removal and defrockment, which we held improper because done in violation of the prescribed procedures of the Serbian Church (60 Ill. 2d 477, 501-3). As to Dionisije's suspension we held that it was no longer effective since he had

not been tried within a year of his ecclesiastical indictment as required by church law.

The Supreme Court of the United States in turn reversed with regard to the suspension and the removal of Dionisije because our decision was considered as undertaking to resolve "religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church" (426 U.S. 696, 720, 49 L. Ed. 2d 151, 169, 96 S. Ct. 2372, 2385). Following the remand of the cause to us for further proceedings, we reversed the judgment, in part. (66 Ill. 2d 469 (1977).) Thereafter, on February 22, 1978, the circuit court entered a final judgment in favor of the plaintiffs, and the defendants filed a notice of appeal. A direct appeal to this court was allowed pursuant to Rule 302(b) (58 Ill. 2d R. 302(b)). At the same time we stayed the force of the judgment and suspended its enforcement.

Our mandate to the circuit court stated that the judgment of that court should be affirmed insofar as it held that Bishop Dionisije had been properly removed as bishop of the American-Canadian Diocese, but that that part of the judgment which held the reorganization of the American-Canadian Diocese to have been invalid should be reversed. We are satisfied that the judgment entered by the circuit court on remand conformed to the mandate of this court and to that of the United States Supreme Court with respect to the suspension and removal of Dionisije and the reorganization of the Diocese. That being so, it is not open to the defendants as appellants to raise questions which were or could have been raised on the former appeal. *People v. National Builders Bank* (1957), 12 Ill. 2d 473, 474, 476; *People ex rel. Maeras v. Chicago, Burlington & Quincy R.R. Co.* (1967), 36 Ill. 2d 585, 586, cert. denied.

OPINION OF THE ILLINOIS SUPREME COURT

(Dated January 15, 1979)

No. 50639

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open to the defendants as appellants to raise questions which were or could have been raised on the former appeal. *People v. National Builders Bank* (1957), 12 Ill. 2d 473, 474, 476; *People ex rel. Maeras v. Chicago, Burlington & Quincy R.R. Co.* (1967), 36 Ill. 2d 585, 586, cert. denied (1967), 389 U.S. 427, 19 L.Ed. 2d 655, 88 S. Ct. 578.

The defendants complain that the circuit court went beyond the terms of the mandate, however, and exceeded its jurisdiction, in that it required two foreign corporations affiliated with the Diocese to turn over their assets to the plaintiffs even though these corporations were not served with process, were not named as parties, and did not appear in the suit. One of these corporations is the St. Sava Church and Educational Mission of the Serbian Eastern Orthodox Diocese for the United States and Canada, a not-for-profit corporation organized by Dionisije under the laws of California in May, 1962 while he was still bishop of the Diocese. The corporation holds legal title to about 170 acres of land near Jackson, California, acquired from the Illinois religious corporation in December, 1962.

The other corporation is the St. Sava Home, a Pennsylvania not-for-profit corporation organized by Dionisije in 1966, after the present litigation had begun. In 1969 Dionisije caused to be transferred to the St. Sava Home title to 18 acres out of a tract of 1,200 acres near Shadeland, Pennsylvania, which the Illinois religious corporation had acquired in 1951. A tract of some 230 acres in Libertyville, Illinois, originally owned by the Illinois religious corporation, was transferred by it to the Illinois monastery corporation in 1945. Since the monastery corporation is party to this suit, however, the defendants raise no question as to the court's jurisdiction to enter judgment against it.

The ordering portion of the judgment does not in terms direct either the California or the Pennsylvania corporation to turn over assets to the plaintiffs. The defendants argue, however, that these corporations fall within the following language appearing in paragraph 6 of the judgment:

"Defendants and each of them, and all persons, firms, corporations and entities who have acted or who are acting under, with, or pursuant to their order or direction or in concert with them, ***are further ordered to relinquish and turn over control and management of all diocesan property and assets now in their control and under their management to the plaintiff, Firmilian, or his lawfully designated nominees or successors."

The defendants' argument rests on the presence in the judgment of findings, to which the defendants also object, that the property transferred to the foreign corporations by the Illinois religious corporation was impressed with a trust imposed in favor of members of the Diocese and that, following the suspension of Dionisije, Firmilian, as administrator of the Diocese and as chief executive officer of the Illinois and the foreign corporations, became responsible for the administration of that trust. The plaintiffs' second amended and supplemental complaint does not seek relief against the foreign corporations, and we do not consider that the ordering portion of the judgment is intended to require action on their part. *Aloe v. Lowe* (1921), 298 Ill. 404, 408.

So far as the findings of the court are concerned, they are not inappropriate. This case was tried and decided on the proposition that the property at stake was held in trust for the members of the Diocese subject to the control of its bishop under the provisions of the constitutions of

the Serbian Orthodox Church and of the Diocese. The defendants' answer to the complaint did not assert by way of an alternative defense that the disposition of the property to which the two corporations hold title was not subject to the directives of whoever was the legitimate bishop of the Diocese. The earlier judgment entered after trial contained the same findings as those in the judgment on remand respecting property held by the foreign corporations. The defendants' post-trial motion to reconsider did not challenge them. The plaintiffs state that no such challenge was made on appeal, and the defendants do not contend to the contrary.

The validity of Dionisije's suspension and removal and the validity of Firmilian's appointment as administrator having been conclusively adjudicated, any claim based on Dionisije's former status as bishop was perforce extinguished. (See 426 U.S. 696, 709, 723n.15, 724, 49 L.Ed. 2d 151, 163, 170n.15 171, 96S. Ct. 2372, 2380, 2387 & n. 15.) For the same reason we cannot now entertain the defendants' contention that the property held by the foreign corporations is, under their constitution and bylaws, controlled individually by their members, and is not in fact diocesan property. Moreover, even assuming that the judgment below somehow deprived the corporations of a property interest, we fail to see how Dionisije or his co-defendants were thereby prejudiced or aggrieved. *Harris v. Algonquin Ready Mix, Inc.* (1974), 59 Ill. 2d 445, 451.

On remand the defendants also asserted a right to be reimbursed for "improvements" in the Pennsylvania property which are said to have enhanced its value. These improvements, whose nature is not described in the defendants' brief, were allegedly made at the defendants' own expense, and the defendants ask that the cause be remanded to the trial court for the purpose of receiving evidence relative to the amount due.

The alleged improvements were not made, the defendants admit, until after the conflict between the Dionisije and the Firmilian factions had developed, Dionisije had been deposed, and the present litigation had been begun. It is not asserted that the improvements were made with the plaintiffs' consent or pursuant to a court order. And again, it does not appear that the question of reimbursement was raised either at the trial or in the appeal which followed. A hearing on the reimbursement matter was therefore not warranted.

On the remand the defendants represented to the trial court that in May, 1977 they had obtained through the Federal Freedom of Information Act (5 U.S.C. sec. 552 (1977)) certain documents not available at the time of trial which purportedly showed complicity by the government of Yugoslavia in the proceedings which led to the suspension and removal of Dionisije. The defendants alleged that in addition to the documents already received others had been requested from various Federal agencies but had not yet been delivered. The defendants did not request the admission into evidence of any documents, but asked that they be allowed "additional time to obtain full documentation and contact possible witnesses."

Even if the defendants were seeking a new trial in an ordinary suit, the record before us would require a holding that no showing had been made of newly discovered evidence so conclusive as to make it likely that a new trial would yield a different result. (*Crane Co. v. Parker* (1922), 301 Ill. 331, 337.) And here, of course, the determination whether there was ground for Dionisije's suspension and removal was one which, under the decision of the United States Supreme Court in this case, was committed to an ecclesiastical tribunal. Review of its decision would be "marginal," extending at most to

whether its decisions was the product of collusion. 426 U.S. 696, 711-13, 49 L.Ed. 2d 151, 163-64, 96 S. Ct. 2372, 2381-82.

This proceeding has now lasted over 15 years, and during this time the defendants, by virtue of supersedeas orders, have enjoyed control over the property and the administration of diocesan affairs to the exclusion of the plaintiffs, notwithstanding the removal of Dionisije. There is no reason to prolong this litigation into the indefinite future by permitting a roving inquiry having so uncertain an outcome as the one sought by the defendants.

For the reasons given above, the judgment of the circuit court is affirmed.

Judgment affirmed.

MORAN and KLUCZYNSKI, JJ., took no part in the consideration or decision of this case.

**POST JUDGMENT MEMORANDUM OF
THE CIRCUIT COURT OF ILLINOIS**

(Dated March 28, 1978)

STATE OF ILLINOIS
COUNTY OF LAKE

No. 63-1644

No. 63-2312

Consolidated as: No. 63-1644

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

THE SERBIAN EASTERN ORTHODOX DIOCESE
FOR THE UNITED STATES OF AMERICA
AND CANADA,
a Religious Corporation,
Plaintiffs-Appellees,

vs.

DIONISIJE MILIVOJEVICH,
Defendants-Appellants.

POST JUDGMENT MEMORANDUM
(Dated March 28, 1978)

The Court filed its final judgment in this case on February 22, 1978. A proposed draft of a final judgment was submitted to the attorneys for both sides shortly before January 1, 1978.

The defendants filed a pleading captioned "Post Trial Motion," the plaintiffs responded thereto.

Upon remand from the Supreme Court of Illinois the case was assigned to this writer. This Court did not perceive the mandate of the Supreme Court to include an invitation to, or an opportunity for, relitigation of any issues of fact dealt with in the original trial. It was con-

sidered by this Court as a direction to revise the decree with respect to the erroneous conclusions of law reached by the trial court; reversed by the Supreme Court of the United States, and to provide for the implementation of the revised judgment.

For that reason this Court rejected the contention of the defendants that the decision of the Supreme Court required reopening the case for the taking of new evidence on matters not dealt with by the original trial court and later denied the petition for leave to intervene by a new religious entity, claiming an interest in the proceedings, but not in itself a party to the original suits.

The Court was not unaware that the passage of time may very well have given rise to new issues, or new claims of property interests. It was not the intention of this Court to preclude the determination or resolution of such claims, if any, in another forum or forums of appropriate jurisdiction, neither was it the intention of the Court to have the judgment accommodate itself to the climate in which the parties find themselves today but rather to reflect the position of the parties viz-a-viz each other at the time of the entry of the original decree.

In line with that attitude, the Court preserved to the extent it could do so, not inconsistent with the Supreme Court's opinion, the language of the original decree, and did not review or modify that decree in any respect not inconsistent with the Supreme Court's opinion, even though that decree may have contained technical mistakes in the designation of the names of certain property holding corporations or entities.

Neither did the Court intend to interfere with the defendants' freedom of religion as guaranteed by the First Amendment to the Constitution and does not agree that

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any such construction could be successfully placed on any provision in its final judgment.

Judge Carey, in his original decree, did not deal with ownership of property. This Court, in its final judgment, did not deal with ownership of property; it meant to deal only with the administration of church property in the manner provided by the charters and by-laws of the property holding corporations consistent with the ecclesiastical rulings of the Serbian Orthodox Church in Belgrade, Yugoslavia as required by the decision of the United States Supreme Court.

The relief prayed for in the defendants' motion is denied.

The implementation of the final judgment should begin at once and be completed within ten (10) days, unless of course a Notice of Appeal is filed, with an application for a supersedeas.

This memorandum is to be filed as part of the record in this cause.

Respectfully entered:

/s/ THOMAS R. DORAN
Judge

Dated at Waukegan, Illinois
this 28th day of March, 1978

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**OPINION AND FINAL JUDGMENT OF
THE NINETEENTH CIRCUIT COURT OF ILLINOIS**

(Dated December 30, 1977)

No. 63-1644

**IN THE CIRCUIT COURT OF THE
NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS**

**THE SERBIAN EASTERN ORTHODOX DIOCESE
FOR THE UNITED STATES OF AMERICA
AND CANADA, a Religious
Corporation,**

Plaintiffs-Appellees,

vs.

**DIONISIJE MILIVOJEVICH,
*Defendants-Appellants.***

**TEXT OF JUDGE DORAN RULING
FINAL JUDGMENT**

This consolidated cause, coming on for entry of a final judgment, pursuant to the mandate of the Supreme Court of Illinois filed on the 25th day of May, 1977, and the Court having heard the arguments of counsel and having considered the written briefs filed herein and being fully advised in the premises, finds and concludes as follows:

1. The plaintiffs are the Serbian Eastern Orthodox Diocese for the United States of America and Canada, a religious body duly organized and existing since 1921; Bishop Firmilian Ocokoljich, a Serbian cleric (hereinafter referred to as "Bishop Firmilian"); Bishop Sava Vukovich, a Serbian cleric; Bishop Gregory Udicki, a Serbian cleric; who sue on their own behalf and on behalf of those persons, lay and clerical, who recognize and ad-

here to ecclesiastical and hierarchical allegiance to the Serbian Orthodox Church whose Patriarchal See is located in Belgrade, Yugoslavia, which church is one of fourteen recognized orthodox ecclesiastical and hierarchical churches in the world and is hereinafter referred to as the "Serbian Church."

2. The defendants are Dionisije Milivojevich (hereinafter referred to as "Dionisije"), a former Bishop of the Serbian Orthodox Church, a former diocesan bishop and officer and agent of the Serbian Eastern Orthodox Diocese for the United States of America and Canada; the Serbian Eastern Orthodox Diocese of the United States of America and Canada, an Illinois religious corporation organized and existing since 1935 under the Illinois Religious Corporations Act (hereinafter referred to as the "Illinois religious corporation"); and the Serbian Orthodox Monastery of St. Sava, an Illinois not-for-profit corporation organized and existing since 1945 under the Illinois Not-for-Profit Corporations Act (hereinafter referred to as the "Illinois not-for-profit corporation").

3. The Serbian Church is an ancient, world-wide, hierarchically organized church. Under the Serbian Church's hierarchical organization, the geographical territories throughout the world over which it assumes, ecclesiastical authority and administration are designated, fixed and determined by the Church's Holy Assembly of Bishops and thereafter designated and set forth in its Constitution and each is designated a diocese of the Serbian Church; subject, however, to the provisions in the Constitution of the Serbian Church and the provisions in the Constitution of the Serbian Eastern Orthodox Diocese for the United States of America and Canada.

4. The sole power and authority to elect, ordain and

assign a Diocesan Bishop rests in the Serbian Church's Holy Assembly of Bishops. Each Diocesan Bishop is, by virtue of his office as Diocesan Bishop, a member of the Holy Assembly of Bishops (hereinafter referred to as the "Holy Assembly"), the Serbian Church's highest hierarchical judicatory. At the head of the Holy Assembly is one of its number who is designated as Patriarch (the first among equals), who is elected to his office as Patriarch by the Holy Assembly and serves as its President. The executive branch of the Holy Assembly is the Holy Synod. It consists of the Patriarch and four other Diocesan Bishops selected by the Holy Assembly.

5. Neither the Illinois religious corporation nor its members have, nor have they or any of them ever had, the authority to elect, ordain, assign, reject or accept bishops. Any cleric purportedly elected to the office and rank of Bishop of the Serbian Church by any persons, groups or corporations or other entities other than the Holy Assembly were not and are not validly elected to the office and rank of Bishop, their election was and is in each instance null and void. No one of them is or has ever been a Bishop of the Serbian Church.

6. The Serbian Eastern Orthodox Diocese for the United States of America and Canada was created by the Holy Assembly in the early 1920's. Initially, Archimandrite Mardary was assigned to administer the affairs of the newly created diocese. On November 22, 1925, Mardary was elected by the Holy Assembly as Diocesan Bishop for the diocese of the United States of America and Canada. Prior to his death Bishop Mardary caused the Illinois religious corporation to be formed. It was organized on May 10, 1935 pursuant to the Illinois Religious Corporations Act, ch. 32, pars. 46(a) - (k). It has the powers and obligations as are set forth and defined in the Diocesan

Constitution, the Constitution of the Serbian Church and the Illinois Religious Corporations Act, as amended (Ill. Rev. Stats. 1971, pars. 176-187).

7. All assets, real, personal, tangible and intangible transferred by the Illinois religious corporation (and all those acting under and pursuant to its authority), were so transferred to the aforescribed Illinois not-for-profit corporation, Shadeland Corporation and Jackson Corporation subject to, and impressed with, the trust imposed upon those assets.

8. Dionisije was elected by the Holy Assembly in Belgrade, Yugoslavia, as Diocesan Bishop for the Serbian Eastern Orthodox Diocese for the United States of America and Canada in December, 1939. By virtue thereof he became and until suspended on May 10, 1963, served as the chief executive officer of the Illinois religious corporation, the Illinois not-for-profit corporation, the Priests' Pension Fund, the Shadeland Corporation, the Jackson Corporation, and the Diocesan Council. The Illinois religious corporation, the Illinois not-for-profit corporation, the Shadeland Corporation, the Jackson Corporation, and the Priests' Pension Fund, are secular arms of the Serbian Eastern Orthodox Diocese for the United States of America and Canada. The Diocesan Council is the governing body of the Diocese for the United States of America and Canada.

9. On May 10, 1963, the Holy Synod suspended Dionisije. On July 27, 1963, the Holy Assembly removed and deposed Dionisije as Diocesan Bishop and on March 5, 1964, it defrocked him. These actions were valid, free and voluntary, binding ecclesiastical actions of the Holy Synod and Holy Assembly of the Serbian Church, taken wholly within their ecclesiastical power and authority.

They were in no respect tainted with fraud, collusion, duress, or arbitrariness. Accordingly, they must be (and should have been) honored and accepted by defendants, and each of them and, as well, given full force and effect by this and other secular courts of, and in, the United States and Canada, with regard to their effect, ecclesiastically and otherwise, on the possession, control and administration of church property.

10. Dionisije, having been validly suspended on May 10, 1963, and deposed and removed from his position as Diocesan Bishop for the Diocese of the United States of America and Canada on July 27, 1963, and defrocked as a Bishop of the Serbian Church on March 5, 1964, was without power or authority from and after May 10, 1963 to act as, or to exercise any of the rights, privileges, duties, powers or authorities, de jure or de facto, of Bishop of the Diocese. From and after July 27, 1963, the office of Bishop of the Diocese for the United States of America and Canada became vacant (and no longer exists) as did and are the offices of chief executive officer of the Illinois religious corporation, the Illinois not-for-profit corporation, the Priests' Pension Fund, the Jackson Corporation, the Shadeland Corporation and the Chairmanship of the Diocesan Council, as well as other offices and positions of the Diocese and of each of the above-listed corporations, held by the Bishop of the Diocese by virtue of his office as Bishop.

11. The office of Bishop for the Diocese of the United States of America and Canada being vacant, the Holy Assembly had exclusive authority to fill that vacancy. Upon the entry of the order of suspension and pending the final disposition of the suspension of Dionisije and his ultimate reassignment to his office or his removal there-

from by the Holy Assembly, the Holy Synod had exclusive authority to appoint an Administrator of that Diocese of the United States of America and Canada.

12. The Holy Synod, following Dionisije's suspension, validly appointed Bishop Firmilian as Administrator for the Diocese of the United States of America and Canada on May 10, 1963. By virtue of that appointment, Bishop Firmilian has since then been, and is, the chief executive officer of the Illinois religious corporation, the Illinois not-for-profit corporation, the Priests' Pension Fund, and the Diocesan Council, responsible for the administration for the benefit of, and as trustee for those who are members of the Serbian Church and the Serbian Eastern Orthodox Diocese for the United States of America and Canada, of all of the assets tangible and intangible, real and personal, owned, held, controlled and operated by each of the afore-described entities. As Administrator, he has, and has had since his appointment on May 10, 1963, the powers, authorities, rights, duties, privileges, emoluments, immunities, offices and positions of the Administrator of the Diocese of the United States of America and Canada with the powers and subject to the limitations contained in the Constitutions of the Serbian Church and of the Serbian Eastern Orthodox Diocese for the United States of America and Canada.

13. Dionisije and those acting under his control and authority, have since May 10, 1963, illegally and improperly refused to recognize:

- (i) the decisions of the Holy Assembly suspending, removing and defrocking Dionisije, and
- (ii) the authority of Bishop Firmilian as Administrator for the Serbian Eastern Orthodox Diocese for the United States of America and Canada and as such, the

holder of all offices and positions, rights, duties, powers, authorities, emoluments, immunities of Administrator, including, among others, the chief executive officership of the Illinois religious corporation, the Illinois not-for-profit corporation, the Priests' Pension Fund, and the Diocesan Council.

14. Bishop Firmilian's authority as Administrator of the Diocese for the United States of America and Canada is as set forth in the Constitutions of the Serbian Church and the Serbian Eastern Orthodox Diocese for the United States of America and Canada.

15. The Illinois religious corporation has full administrative freedom with relation to possession, use and control of its real and personal property, tangible and intangible, provided, however,

- (i) that it may not change or amend the Diocesan Constitution without the approval of the Holy Assembly.
- (ii) that all said real and personal property, tangible and intangible, has been during all times pertinent hereto, and still is and will remain, property held in trust; and
- (iii) the Illinois religious, Shadeland and Jackson Corporations and the Priests' Pension Fund may not employ any of their property contrary to the trust imposed thereon.

16. The changes and amendment to the Constitution of the Serbian Eastern Orthodox Diocese for the United States of America and Canada purportedly enacted subsequent to May 10, 1963, not having been approved by the Holy Assembly are null and void and without any force or effect, defacto or dejure.

17. On May 10, 1963, after the suspension of Dionisije and the appointment of Bishop Firmilian as Administrator, the Holy Assembly legally reorganized the American-

Canadian Diocese into three dioceses—the Middle Western American Diocese, the Western American Diocese, and the Middle Eastern American/Canadian Diocese. The Holy Assembly left the final fixing of the boundaries for the three new dioceses and all other organizational and administrative matters to be determined by the Diocesan National Assembly. Dionisije was initially (May 10, 1963) named Bishop of the Middle Western American Diocese. However, because of Dionisije's suspension, Bishop Firmilian was made Administrator of that Diocese. Later, when Dionisije was removed as Diocesan Bishop on July 27, 1963, Bishop Firmilian was made Bishop of the Middle Western American Diocese. Bishops Stefan and Gregory were also named first as Administrators and later as Bishops of the Middle Eastern American-Canadian and Western American Dioceses respectively. Upon the death of Bishop Stefan, Bishop Sava was named by the Holy Assembly as the new Bishop of the Middle Eastern American-Canadian Diocese. On May 21, 1977, Bishop Sava resigned as Bishop of the Middle Eastern American-Canadian Diocese and was appointed by the Holy Synod as Administrator of the Diocese.

18. Bishop Firmilian in his capacity as the Administrator of the Serbian Eastern Orthodox Diocese for the United States of America and Canada was authorized to do those acts permitted under the Serbian Church Constitution and the Constitution of the Serbian Eastern Orthodox Diocese for the United States of America and Canada.

19. The reorganization of the American-Canadian Diocese on May 10, 1963 and the appointments of Administrators and Diocesan Bishops for the three reorganized dioceses were valid, effective and binding and must be

given full recognition, force and effect by this and other secular courts throughout the United States.

20. Since May 10, 1963, the administrators and bishops of the three reorganized dioceses have been the chief executive officers and agents of the Illinois religious corporation, the Illinois not-for-profit corporation, the Priests' Pension Fund, the New York Corporation, the Jackson Corporation, and the Shadeland Corporation and have legally held other offices and positions of the three dioceses and each of the above listed corporations which are held by the bishop or administrator of the dioceses by virtue of his office as bishop or Administrator.

21. A Diocesan Council, under the leadership of Bishops, and others acting by and under his direction has been in charge of the temporal affairs of the Serbian Eastern Orthodox Diocese of the United States of America and Canada, as it existed prior to May 10, 1963, and has apparently managed all the temporal affairs of the Serbian Eastern Orthodox Diocese from May 10, 1963 to the present and there has been no evidence presented to this Court of any breach of the trust imposed upon the assets, or wrongdoing, with the assets of the Illinois religious corporation or Illinois not-for-profit corporation since May 10, 1963. The Court further finds that the financial and administrative matters conducted by the Sabors since May 10, 1963 have apparently been in accordance with the Constitution of the Serbian Eastern Orthodox Diocese except to the extent that the Sabors purported to amend the Diocesan Constitution without the approval of the Holy Assembly of Bishops.

22. The plaintiff, Bishop Firmilian, in his former capacity as Administrator of the former diocese, or his successors in interest, who are validly elected or appointed

according to the Constitution of the Serbian Orthodox Church are entitled to take over leadership of the Diocesan Council, referred to in the previous paragraph, and to assume the management of the temporal affairs of the former diocese, and to assume all the offices and positions; rights, duties, powers, authorities, emoluments and immunities of the said positions, including the chief executive officerships of all the religious corporations; to hold in trust and administer the diocesan property subject to the terms of the Corporate charters and by-laws of the said corporations.

23. The plaintiff or plaintiffs referred to in the paragraph 22 are entitled to a justification of their stewardship from the defendants of their administration of the diocesan property from April 30, 1973 to the date the defendants relinquish the management of said property.

In view of the within and foregoing findings and conclusions;

IT IS ORDERED AND ADJUDGED THAT:

1. The decisions and actions of the Holy Assembly and the Holy Synod relating to the suspension, removal and defrockment of Dionisije were in no way tainted with fraud, collusion, duress, undue influence or arbitrariness. They were in all instances voluntary and legally authorized actions and they were valid, authorized and proper ecclesiastical decisions of the highest judicatories of the Serbian Church, and are in all respects binding upon this Court.

2. The May 10, 1963 decision of the Holy Assembly of Bishops dividing the Serbian Eastern Orthodox Diocese for the United States of America and Canada into three new dioceses, was legal, valid and enforceable.

3. Any purported changes or amendment to the Constitution of the Serbian Eastern Orthodox Diocese for the United States of America and Canada purportedly enacted subsequent to May 10, 1963 are null and void and do not now nor have they ever had any defacto or dejure force or effect.

4. Bishop Firmilian was validly appointed by the Holy Synod to be and has been since his appointment on May 10, 1963 the Administrator of the Diocese for the United States of America and Canada in replacement of Dionisije. Until he is replaced or by the reorganization of the diocese by the Holy Assembly, Bishop Firmilian possesses the authority, rights, duties, emoluments, privileges, immunities, offices and positions which are more particularly set forth in the Constitutions of both the Serbian Church and of the Serbian Eastern Orthodox Diocese for the United States of America and Canada.

5. The office of Bishop of the Serbian Eastern Orthodox Diocese for the United States of America and Canada became vacant July 27, 1963. As a result of the reorganization of the diocese, it no longer exists.

6. Defendants, and each of them, and all persons, firms, corporations and entities who have acted or who are acting under, with, or pursuant to their order or direction or in concert with them, are ordered to recognize Bishop Firmilian as the Administrator of the former Serbian Eastern Orthodox Diocese for the United States of America and Canada and his authority as is set forth in the Constitutions of the Serbian Church and the former Serbian Eastern Orthodox Diocese for the United States of America and Canada; and are further ordered to relinquish and turn over control and management of all diocesan property and assets now in their control and under their manage-

ment to the plaintiff, Firmilian or his lawfully designated nominees or successors; to accomplish this by delivering all books, records, documents, and other items, tangible and intangible which are necessary or desirable to the orderly and efficient administration of the diocesan properties and assets. This turn over is to be completed as promptly as possible, but not later than 30 days from the date of the entry of this judgment.

7. The Court retains jurisdiction of the cause for the purpose of entering further orders, necessary or desirable to enforce this judgment.

8. The cost incurred in this litigation in this court, if not already paid by the parties, shall be borne one half by the plaintiffs as a group and one half by the defendants as a group, except that the redocketing fee upon remand from the Supreme Court of Illinois shall be paid by the defendants.

9. There appears to be no just reason for any delay in the enforcement of or appeal from this judgment.

ENTER:

Judge

Dated at Waukegan, Illinois
this 30th day of December, 1977.

**JUDGMENT ENTRY OF THE
ILLINOIS SUPREME COURT**

(Dated April 26, 1977)

No. 46670

**THE SERBIAN EASTERN ORTHODOX DIOCESE
FOR THE UNITED STATES OF AMERICA
AND CANADA et al.**

v.

DIONISIJE MILIVOJEVICH et al.

PER CURIAM:

In compliance with the mandate of the United States Supreme Court (426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976), *rev'g*, 60 Ill.2d 477, 328 N.E.2d 268 (1975)), it is ordered that the judgment of the circuit court of Lake County is affirmed insofar as it held that Bishop Dionisije had been properly removed as bishop of the American-Canadian Diocese. The judgment of the circuit court of Lake County is reversed insofar as it held that the reorganization of the American-Canadian Diocese was invalid. The cause is remanded to the circuit court of Lake County with directions to enter a judgment in accordance with this order.

*Affirmed in part and reversed in part and remanded,
with directions.*